

In the Description of the Drawings: Change "Figure 1 is a front view of an edit icon for a computer display" to --Figure 1 is a front view of an icon for a computer display--;

IN THE CLAIM:

Change "The Ornamental design for A COMPUTER DISPLAY as shown and described" to --The Ornamental design for an Icon for a Computer Display as shown and described--.

Remarks

The Office Action of August 5, 1996, has been carefully considered. Reconsideration of the present application, as amended below, is respectfully requested.

To summarize the present amendment, the present application has, been amended to (1) delete any reference to the term "PAPER TRAY" and (2) emphasize that the invention is directed to an ornamental icon design for a computer display. Additionally, a copy of amended drawings have been provided for the Examiner's approval. Finally, remarks addressing rejections related to both matter added by amendment and statutory subject matter of the present invention are provided.

Use of the term "PAPER TRAY" was impliedly objected to on the basis that the invention is directed toward an icon for use with a computer display, and use of the icon in conjunction with a paper tray has no bearing on patentability of the icon. Applicants have amended the present application to delete all references to the paper tray. Moreover, the Title of the Invention, Description of the Drawings and Claim have been amended to place them in a form more suitable for allowance.

The drawings were objected to on the basis that Figures 3-6, 8 and 9 must be canceled in view of Applicants' election in an Amendment of October 15, 1996. Moreover, a renumbering of Figures 1, 2 and 7 as Figures 1-3,

respectively, is required. A copy of a proposed set of drawings, with revisions shown in red, is provided herewith for the Examiner's approval. A set of formal drawings will be provided in response to an indication that allowable subject matter has been found in the present application.

The Office Action of August 5, 1997 is arranged in 11 subsections. Those subsections of the Office Action which require addressing will be discussed below in a suitable order:

Re subsection 5 of the Office Action

The proposed amended illustration submitted with Applicants' amendment of May 21, 1993, was entered; however the illustration has been objected to under 35 U.S.C. § 132 as adding new matter and the claim has been rejected under the first paragraph of 35 U.S.C. § 112 as being unsupported by the specification.

Applicants' amended illustration merely added in phantom, thus unclaimed, a computer display background in which the claimed design is embodied. As shown by the following remarks, such computer display is supported by the original title, specification and claim (as well as the law), and that any objection/rejection of the proposed amended illustration is unwarranted.

The meaning of the term "computer display" is well understood by both those skilled in the art as well as laypersons. Referring to Appendix I, the respective dictionary definitions of "computer" and "display" are consistent with the view that a computer display is an article for displaying information, such as computer generated icons.

Additionally, in view of the patent literature available at the time of the filing of the present application, one of skill in the art of computer generated icon design would understand readily the manner in which the present edge trim icon is embodied in the article. This is supported by a search, performed by one of Applicants' representatives in the Lexis database on November 3,

1997. To elaborate, the following term was used to perform a search in the "ALL" file of the "PATCOP" library.

(Computer w/2 Display) w/5 Icon) and (Filed bef 06/14/91)

As should be recognized, the term facilitates a search for each patent filed prior to June 14, 1991 in which the word "icon" is within five words of the expression "computer display. Twenty five (25) patents were found using this search term (See Appendix II listing the patents found during the search) and a substantial number of such patents include explicit teachings regarding the manner in which a computer generated icon is embodied in a computer display.

Moreover, it is submitted that the U.S. Patent and Trademark Office understood that icons are embodied in computer displays since the present application was classified in a design area (D18) relating to "office machinery" and "printing devices". In performing a search for the present application, various references relating to the use of graphic icons on computer screens were found. By its own actions, relative to the prosecution of the present application, the USPTO has demonstrated a tacit understanding that the Icon of the present application is embodied in the screen of a computer.

The Office Actions received thus far virtually ignore references in the present application to the "computer display" article and thus view amendment of the drawings to be impermissible. This disregard is in contradiction to the rules governing such matters. 37 C.F.R. § 1.118(a) specifies in pertinent part that "[a]ll amendments to the specification, including the claims, and the drawings filed after the filing date of the application must conform to at least one of them as it was at the time of the filing of the application." Applicants' amended drawings, in now conforming to the title, description *and* claim, clearly meets this requirement, which applies to design applications according to 37 C.F.R. § 1.151. Only "[m]atter *not found in either,*

involving a *departure from* or an *addition to* the original disclosure, cannot be added to the application” 37 C.F.R. § 1.118(a) (emphasis added). No showing has been made or grounds established to support a determination that the representative computer screen now in the drawing in any way “departs from” or “adds to” the disclosure of that article in the original title, specification and claim of the application. As such, the drawing amendment in the present application is properly distinguished from an application having a symbol, feature or element in (or added to) an original drawing that is not disclosed in the original application.

Applicants’ amended drawings add no new matter and are proper according to other pertinent rules governing design patent applications, namely 37 C. F. R. § 1.117. Section 117 sets forth that,

[t]he specification, claims and drawings must be amended and revised when required, to correct inaccuracies of description and definition or unnecessary prolixity, and to secure correspondence between the claims, the specification and the drawing.

The present application discloses the article in the title, specification and claims; as such, the plain meaning of 37 C. F. R. § 1.117 also permits the drawings to be amended in the conforming manner presented by Applicants.

37 C.F.R. § 1.83 provides:

. . . conventional features disclosed in the application and claims, where their detailed illustration is not essential for a proper understanding of the invention, should be illustrated in the drawing in the form of a graphical drawing symbol or a labeled representation (e.g. a labeled rectangular box).

The representative computer display, added to the drawing in the present application for the purpose of clarifying the environment of the invention, clearly qualifies as a "conventional feature": The Icon design is the invention of the present application, not any particular shape or structure of the known computer display upon which it appears, as per the original specification and claim. As interpreted by the courts, Applicants' disclosure "must be read in the light of the knowledge possessed by those skilled in the art, and that knowledge can be established by affidavits of fact composed by an expert." *In re Lange*, 209 USPQ 288, 294 (CCPA. 1981), citing *In re Katzschmann*, 146 USPQ 66 (CCPA 1965). As discussed above, the computer display shown in the drawing is both a conventional feature and supported by the originally filed application. Thus Rule 83 permits Applicants to amend the drawing in the manner presented.

The Office Action also cites 35 U.S.C. § 132 as a basis for determining that the computer display now shown in the drawing is new matter. While Section 132 merely directs without explanation that "[n]o amendment shall introduce new matter into the disclosure of the invention", the M.P.E.P. provides specific guidance on the implementation of this law.

The M.P.E.P. clearly permits drawing amendments to be made in design patent applications by requiring that "[i]n general terms, if the additional or amended illustration is reasonably supported by the original disclosure under 35 U.S.C. § 112, first and second paragraphs, it will not be refused entry." M.P.E.P. § 1504, pg. 1500-8. Any "difference" (amendment) between the original and new drawings is not grounds for rejection under the first paragraph of 35 U.S.C. § 112; rather, the M.P.E.P. instructs that grounds for rejection as new matter exist when "the original disclosure does not include *reasonable support* for the proposed changes." M.P.E.P. § 1504, pg. 1500-8, Form Paragraph 15.51 (emphasis added). Applicants assert that there is

reasonable support for the representative computer display shown in the amended drawings of the present application since the original title, description and claim each specify that the Icon is for a "computer display".

It is Applicants' understanding, based on a telephone interview between the Examiner and one of Applicants' attorneys on December 13, 1996, that addition of a screen to the drawings, based on a disclosure of a "computer display" in the title, specification and claim, constitutes new matter since, notwithstanding the disclosure of computer display in the title, specification and claim, a proportional relationship between the icon and the display (namely the article) was not disclosed in the originally filed application. It is submitted that any alleged proportional relationship of the Icon to the conventional display is not being claimed and is not dispositive to a consideration of the patentability of the subject computer generated icon. Applicants' coverage of the present icon is not intended to be limited to an icon or screen of any particular proportions. The icon could be large relative to the screen or small relative to the screen.

The screen is shown only in broken lines and no particular proportional relationship between the display and the icon is conveyed. That is, the broken line illustration merely designates the article in which the icon design is embodied. This view is consistent with the MPEP § 1503.02 which provides:

A broken line showing is for illustrative purposes only and forms no part of the claimed invention. . . . The use of broken lines indicates that the environmental structure or the portion of the article depicted in broken lines forms no part of the design, and is not to indicate the relative importance of parts of the design.

To give weight to the broken lines in the manner suggested by the interview would raise broken lines to a level of significance that is not

supported by the controlling law. *In re Zahn*, 204 USPQ 988, 994-996 (CCPA 1980). More particularly, as taught by *Zahn*, the broken lines are only intended to indicate the existence of the article, but not *how* the subject design is embodied in the article:

No sound authority has been cited for any limitation on *how* a design is to be embodied in an article of manufacture. Here the design is embodied in the shank portion of a drill and a drill is unquestionably an article of manufacture. It is thus applied design as distinguished from abstract design. . . . We note also that § 171 refers, not to the design *of* an article, but to a design *for* an article, and is inclusive of ornamental designs of *all* kinds including surface ornamentation as well as configuration of goods.

Zahn at 995 (emphasis in original) (*citing, In re Hruby*, 153 USPQ 61 (1967)).

It follows from both the MPEP and *Zahn* that, in the case of an applied design, the exact dimensions or characteristic features of an article of manufacture shown in broken line drawing are irrelevant. That is, the broken line drawing of the article is intended to convey nothing more than the mere presence of the article. There can be little doubt, in view of the opinions of *Zahn* and *Hruby*, that an article, when provided in broken line drawing, is to be treated as environment or background. Accordingly, the design in *Zahn* is for a drill bit shank, and *not* any particular drill (i.e. article). If the case were otherwise, an Applicant would be forced to disclose an unlimited number of design/article configurations in order to obtain comprehensive coverage for an applied design, e.g. a separate design application would be required for a range of shank/drill or icon/screen configurations.

As discussed above, the application, as originally filed, provides more than ample § 112 support for the addition of an exemplary, conventional

screen to the drawings. To require the present Applicants to disclose any more than an exemplary screen would be inconsistent with both the MPEP and the corresponding law. In accordance with the MPEP and the corresponding law, there is nothing to support the argument raised in the interview, as understood by Applicants, that amendment of the drawings to include the article requires support in the originally filed application as to the size proportionality between the applied design (the icon) and the article (the computer display or screen).

Re: Subsections 7-9 of the Office Action

The claim of the present application has been rejected under 35 U.S.C. § 171 as not being directed toward statutory subject matter. Subsection 9 of the Office Action provides guidance, with respect to obtaining design patent coverage for computer generated icons, by reference to the following conditions stated in USPTO Guidelines at 1185 OG 60:

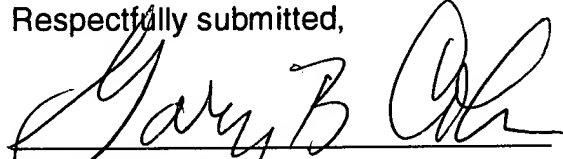
- 1) the computer screen, monitor, other display panel, or portion thereof is shown in broken or solid lines with the icon displayed on it, and
- 2) the claim is directed to the subject matter as embodied in an article of manufacture.

On the basis of support in the original title, specification and claim, the drawing has been amended to show the Icon as being surrounded by a broken line representative of a computer display or screen. Moreover, on the basis the original title, specification and claim, it should be clear that the Icon is embodied in the computer display, i.e. the Icon is used to provide ornamentation for the computer display. Hence the Icon of the subject application constitutes patentable subject matter in accordance with the requirements of both 35 U.S.C. § 171 and the pertinent USPTO Guidelines.

In view of the foregoing remarks and amendments, reconsideration of this application and allowance thereof are earnestly solicited.

In the event the Examiner considers personal contact advantageous to the disposition of this case, she is hereby requested to call Applicants' attorney, Gary B. Cohen, at Telephone Number (716) 423-6612, Rochester, New York.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gary B. Cohen", written over a horizontal line.

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GBC/ez

November 4, 1997

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Attachments: Appendixes I and II

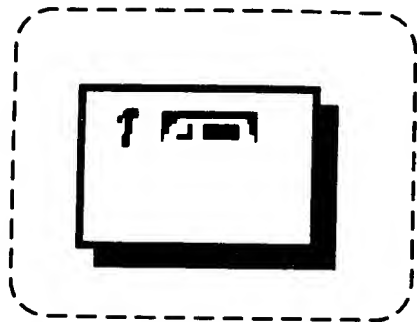


FIG. 1

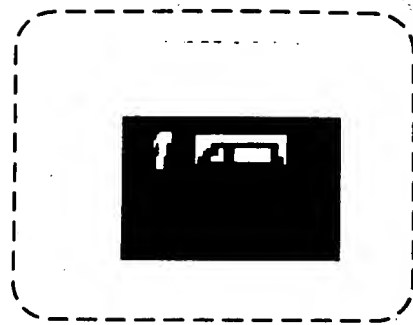


FIG. 2

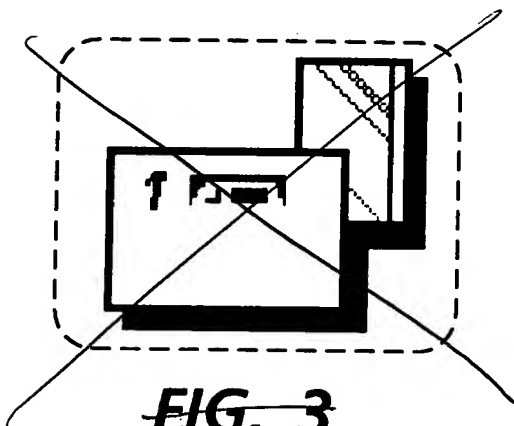


FIG. 3

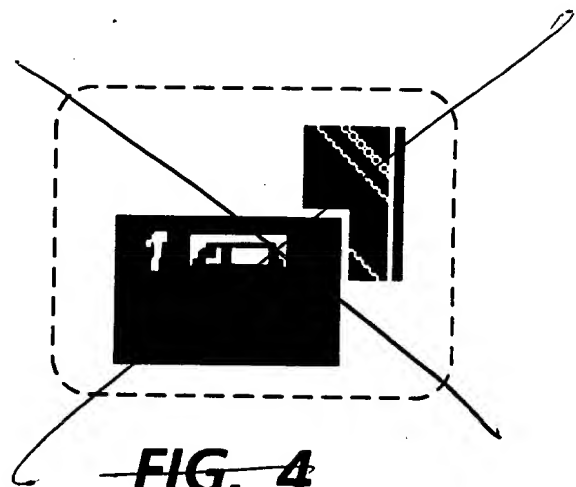


FIG. 4

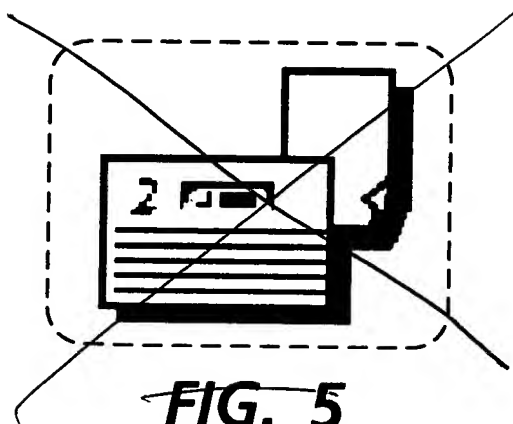


FIG. 5

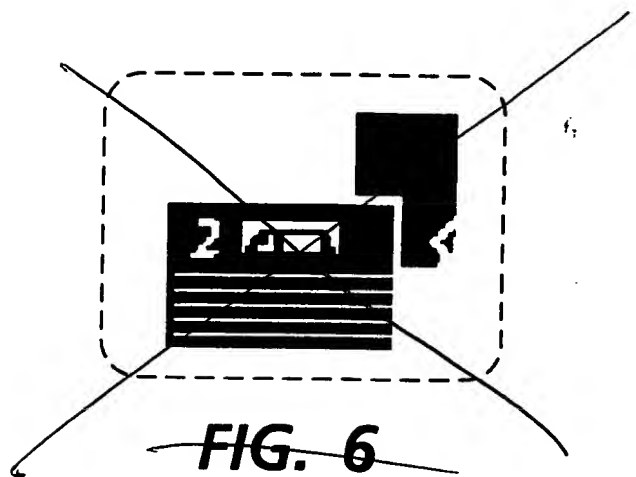


FIG. 6

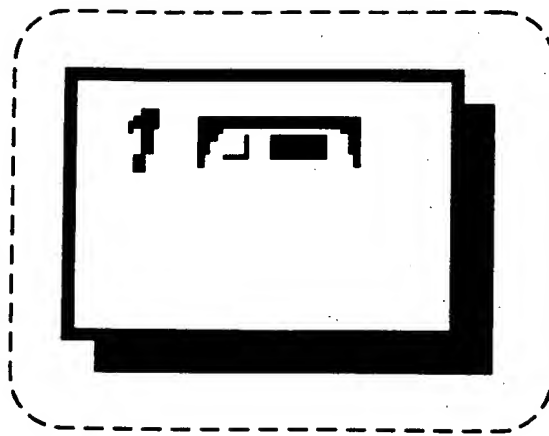


FIG. 7 3

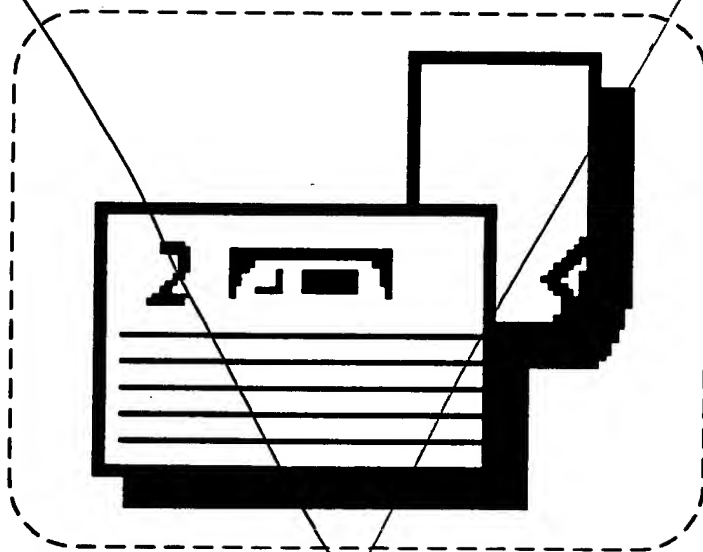


FIG. 8

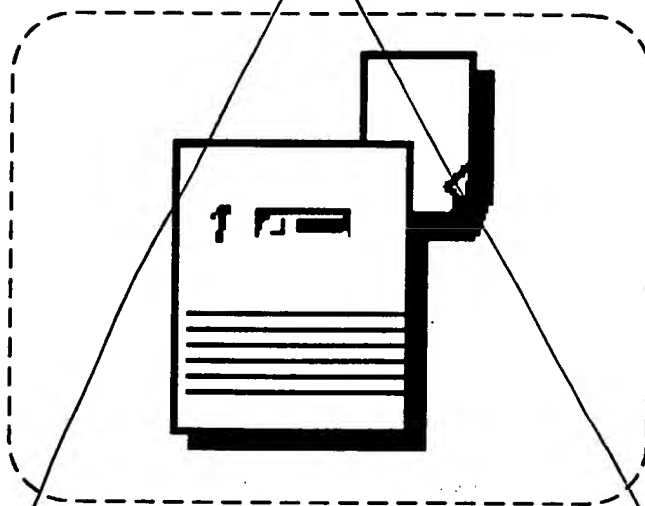


FIG. 9

271

v\ yet \zh\ vision \i, k, ʰ, æ, œ, u, œ, ʰ\ see Guide to Pronunciation



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Library of Congress Cataloging in Publication Data
Main entry under title:

Webster's ninth new collegiate dictionary.

p. cm.

ISBN 0-87779-508-8. — ISBN 0-87779-509-6 (indexed). — ISBN
0-87779-510-X (deluxe)

1. English language—Dictionaries.

PE1628.W5638 1990

423—dc20

89-38961

CIP

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APPENDIX II

1. 5,442,795, Aug. 15, 1995, System and method for viewing icon contents on a video display, Levine, Stephen R., North Andover, Massachusetts Boylan, Stephen P., Somerville, Massachusetts Schirpke, Michael W., Bedford, Massachusetts Donoghue, Karen, Melrose, Massachusetts Harui, Alex J., Derry, New Hampshire, Wang Laboratories, Inc., Billerica, Massachusetts (02), Date Transaction Recorded: Feb. 05, 1996 ASSIGNMENT OF ASSIGNOR'S INTEREST (SEE DOCUMENT FOR DETAILS). BT COMMERCIAL CORPORATION (AS AGENT) 14 WALL STREET NEW YORK, NEW YORK 10005 Reel & Frame Number: 7795/0928 Date Transaction Recorded: Nov. 29, 1996 FREE FORM TEXT SECURITY AGREEMENT BT COMMERCIAL CORPORATION 14 WALL STREET NEW YORK, NEW YORK 10005 Reel & Frame Number: 8246/0001 Date Transaction Recorded: Apr. 10, 1997 ASSIGNMENT OF ASSIGNOR'S INTEREST (SEE DOCUMENT FOR DETAILS). KODAK LIMITED HEMEL HEMPSTEAD, HERTS HP1 1JU, ENGLAND Reel & Frame Number: 8447/0547

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